

STATEMENT OF  
COMMISSIONER MICHAEL J. COPPS

*Re: Connect America Fund, WC Docket No. 10-90; A National Broadband Plan for Our Future, GN Docket No. 09-51; Establishing Just and Reasonable Rates for Local Exchange Carriers, WC Docket No. 07-135; High-Cost Universal Service Support, WC Docket No. 05-337; Developing an Unified Intercarrier Compensation Regime, CC Docket No. 01-92; Federal-State Joint Board on Universal Service, CC Docket No. 96-45; Lifeline and Link-Up, WC Docket No. 03-109; Mobility Fund, WT Docket No. 10-208*

A lot of folks bet we couldn't get here today. They said Universal Service was too complicated and Intercarrier Compensation too convoluted ever to permit comprehensive reform. Universal Service was sadly out of step with the times, Intercarrier Comp was broken beyond repair. Yet here we are this morning, making telecommunications history with comprehensive reform of both Universal Service and Intercarrier Compensation. The first thing I want to do is congratulate Chairman Genachowski for the leadership he brought to bear in getting us to a place where no previous Chairman has managed to go. Today, thanks to his leadership, we build a framework to support the Twenty-first century communications infrastructure our consumers, our citizens and our country so urgently need. So mighty praise is due the Chairman, and even those who may take exception to parts of what we approve today will join me in thanking him for his commitment, courage and herculean effort to make this happen.

In the face of the complex systems we modernize today, it is all too easy to forget the simple, timeless goal behind our policies: all of us benefit when more of us are connected. The principle of Universal Service is the life-blood of the Communications Act—a clarion call and a legislative mandate to bring affordable and comparable communications services to *all* Americans—no matter who they are, where they live, or the particular circumstances of their individual lives. So it is altogether fitting as we move away from support designed primarily for voice to support for broadband, that we bear witness to the accomplishments USF has made over the years to connect America with Plain Old Telephone Service. The Fund has achieved truly laudable success. Thanks to both high cost support and low income assistance, we now have voice penetration rates in excess of 95% nationally. No other infrastructure build-out has done so much to bind the nation together. Additionally it has enabled millions of jobs and brought new opportunities to just about every aspect of our lives. Some stark challenges remain, of course, particularly in Native areas. The shocking statistic in Indian Country is a telephone penetration rate that at last report hovers in the high 60th percentile. Getting voice service and broadband to Indian Country and other Native areas is a central challenge to implementing the reforms we launch today. Bringing Universal Service into the Twenty-first century is the only way we can extend the full range of advanced communications services to places those services will not otherwise go.

The big news here, of course, is that Universal Service is finally going broadband. This is something I have advocated for a long, long time. It is something a decade and more overdue and a step that the Joint Board on Universal Service strongly backs. These new tools of advanced communications technologies and services are essential to the prosperity and well-being of our country. They are the essential tools of this generation like the hoe and the plow, the shovel and the saw were to our forebears. No matter if we live in city or hamlet, whether we work in a factory or on a farm, whether we are affluent or economically-disadvantaged, whether we are fully able or living with a disability—*every citizen* has a need for, and a right to, advanced communications services. Access denied is opportunity denied. That applies to us as individuals and as a nation. America can't afford access denied—unless we want to consign ourselves and our children to growing, not shrinking, digital divides. We are already skating around the wrong side of the global digital divide in many ways, when we should have learned by now that the rest of the world is not going to wait for America to catch up. But here's the good news. If we seize the power of this technology, and build it out to every corner of the country and make it truly

accessible to every American, there's no telling what we can accomplish. America would be back at the front of the pack.

The current system, for all the good it accomplished, has outlived its time. It has strayed from what Congress intended and consumers deserve. Inefficiencies and waste crept in where efficiency and ongoing oversight should have been standard operating procedure. As problems arose they were too often minimized or allowed to compound. At best, we settled for band-aids that never managed to stanch the hemorrhage. Sometimes we didn't even try band-aids. And the Commission more than once made things worse by calling communications technologies and services things that they were not, engaging in linguistic exegesis with a fury that even the most intense biblical scholars of old were incapable of achieving. In sum, we lost sight of the original purposes of both the Telecommunications Act of 1996 in general and the Universal Service Fund in particular.

Whatever the causes, and we could debate them for hours, our current USF and Intercarrier Compensation regimes are broken. Legacy access rates encourage carriers to maintain yesterday's technology instead of reaping the benefits of today's IP based networks. The hidden manipulations of intercarrier payments cost consumers billions of dollars each year. We reimburse some carriers for whatsoever they choose to invest in certain parts of their networks, regardless of whether a lesser amount was all that was needed to provide service to their customers. In some areas of the country, we subsidize four or more wireless carriers based on the costs of a wireline network. All of this excess is reflected in inflated monthly rates that consumers pay. The old saying is, "If it ain't broke, don't fix it." Well, it's broken. And we are left with no real option short of a major fix. No tinkering around the edges is capable of putting these systems back on a solid footing.

Some will claim we attempt too much today. But we would not have to overhaul these programs so fundamentally had the Commission been attentive to its duty to address these problems as they arose and worsened through the years. It's not that we didn't see the writing on the wall. Many people did. Years ago, as just one example, I proposed putting Universal Service funds to work supporting broadband build-out, like other countries were doing. Four years ago, four of my colleagues here were ready to vote to put USF on a new broadband footing, including a pilot program for competitive auctions. On Intercarrier Compensation, we four were ready to vote at the same time for lowered rates and an end to traffic pumping and phantom traffic. Commissioner McDowell will remember this well because we worked closely together on it.

What we are doing today is repairing two broken systems and putting in place a more credible and efficient framework that will benefit consumers, carriers and the country. We are approving a framework for allocating limited resources to mitigate serious communications shortfalls. It is a framework that should give all stakeholders a clearer picture of how these systems will work going forward and that will provide predictability for rate-payers, businesses and policy-makers. I would have much preferred a higher budget for the Fund—a budget that I believe consumers would accept because of its importance to putting the nation back to work and providing our kids with the tools they need for their futures. That being said, we set out down a good and welcome road here with steps that will make a huge difference, and that is why I am able to approve the item even though it is not, in several respects that would come as a surprise no one, the precise item I would have written.

Our focus is on support targeting the unserved areas that need it most. There is much to be said for this approach at this time because of the harsh budget realities the nation faces and because of the perceived need to limit Universal Service, but I hope and expect that our actions today will have spill-over effects in *under-served* areas, too—because America won't be broadband-sufficient until the under-served become fully-served, too. Inner cities can be just as handicapped as more remote regions. Here, too, access denied is opportunity denied. So I welcome the new approach that takes us from scatter-gun

support of voice based largely on the size of carriers and focuses instead on where private investment for broadband refuses to go. This means targeting money for areas where consumers would not otherwise have service, and I believe this is the first time we can really say that about the Fund.

Acting on another long standing recommendation of the Joint Board, we are for the first time creating a specific funding mechanism to support mobility. This is an historic accomplishment. Clearly there are areas—many areas—where mobile broadband providers are doing very well in delivering services and profiting handsomely and where support isn't needed. But there are other areas that are strangers to reliable mobile voice coverage and where the market will otherwise not go.

The mechanism through which we propose to do this—reverse auctions—is a new tool for the Commission. While we have considerable experience with spectrum auctions, this is in many ways a new species of auction and we will need to be very careful in how we approach and evaluate it. I hope it will live up to the high expectations parties have for it and truly become an efficient way to expend our limited USF dollars to reach unserved areas. I expect we will learn a lot from the first such auction and apply those lessons to the future. Let me also say how much I appreciate the item's prohibition on nation-wide package bidding in the Mobility Fund. I believe this is an important safeguard against gamesmanship and even further consolidation in the industry and that it can only redound to the benefit of rural consumers.

I am also pleased that we are adopting another safeguard to encourage stability during the transition to the new regime for mobile support. The course we adopt today has two auction phases, with the second installment of mobility support dependent upon further Commission decision-making. Understanding the need for maximum predictability throughout these transitions, we will halt reductions in legacy support if for some unlikely and unanticipated reason the second auction phase does not take place as planned.

Given the financial constraints we impose on USF, I also am pleased we were able to grow the Mobility Fund from the initial proposal. I would have supported, and I actively encouraged, a larger number given the scope of the challenges we face, but the increase can at least be seen as an important down-payment on further deployment. I appreciate the Chairman's support for this and particularly commend the leadership of my friend Commissioner Clyburn.

I am also encouraged that we launch a Tribal Mobility Fund specifically to target support for mobile service in Tribal areas. The state of broadband in Indian Country is a national disgrace—somewhere in the embarrassingly low single digits. Again, getting this right will take more money than is being proposed in today's proceedings, but it also hinges on more than money alone. It hinges also on the Commission taking prompt action on other proceedings and spectrum issues pending before us. Even in addition to all this, there are a host of confidence-building and cooperation-building challenges confronting us. I do believe the current Commission is on the right path to rebuilding our consultative mechanisms with Native Nations. We have new dialogues taking place, new inputs being shared, and new commitments to work together. We are also moving toward a fuller appreciation of what tribal sovereignty means and of the need to accord tribes the fuller and more active role they must have in order to ensure the best and most appropriate deployment and adoption strategies for their areas and populations. I feel encouraged that we are at long last positioning ourselves to make progress by working more closely and creatively together. The sad history here, as we all know, is many promises made, many promises broken. We need to turn the page, and I think we are beginning to do that now.

I also applaud the strong-build out benchmarks that will be a condition of receiving Mobility Fund dollars, and indeed support from any of our new programs, with meaningful enforcement and clawback consequences if providers do not meet their obligations to consumers. This injects much-

needed discipline into the system. It is another really important component of our actions today and, strongly enforced, one that will inspire more confidence in the new system than we ever had in the old.

Today is also historic because we finally take on the challenge of Intercarrier Compensation. We take meaningful steps to transform what is badly, sadly broken. This item puts the brakes on the arbitrage and gamesmanship that have plagued ICC for years and that have diverted private capital away from real investment in real networks. By some estimates, access stimulation costs nearly half a billion dollars a year, and phantom traffic affects nearly one fifth of the traffic on carriers' networks. Today, we say "no more." We adopt rules to address these arbitrage schemes head on. And, very importantly, we chart a course toward a bill-and-keep methodology that will ultimately rid the system of these perverse incentives entirely.

My enthusiasm here is tempered by the fact that end-user charges (under the label of "Access Recovery Charges") are allowed to increase, albeit incrementally, for residential consumers. My first preference was to prevent any increase. Alternatively, we could require individual carriers to demonstrate their need for additional revenues before imposing the ARC. Perhaps some of the largest and most profitable companies should not be able to charge the ARC. However, the Commission does adopt some important measures to protect consumers even as it allows additional charges. In particular, consumers already paying local phone rates of \$30 or more cannot be charged the ARC. The use of this ceiling recognizes that some early adopter states have already tackled intrastate access rates, and their citizens may already be footing a reasonable part of the bill. In the end, I am grateful that, at the very least, additional charges to end-users are not as great as they might have been, are spread over a longer period of time, and should be offset (and hopefully more than matched) by savings and efficiencies realized because of the more rational programs we begin to put in place. And I am hopeful the Commission will do everything it can to assure that these savings are passed on to consumers, although I continue to lament that the fact that we don't have a more competitive telecommunications environment that would better ensure consumer-friendly outcomes.

While "The Inside-the-Beltway" crowd and the armies of industry analysts and assorted other savants will be parsing today's items with eyes focused exclusively on which company or industry sector is up or down, who gains the most or least, and on all the other issues that will cause forests to be chopped down and vats of ink drained, I hope we can keep the focus on the consumer benefits of what we are doing. I would not—could not—support what we do today unless the expected consumer benefits are real enough to justify the effort—and, yes, the risks—of so sweeping a plan. Much will depend upon our implementation and enforcement—and I am sure some mid-course corrections—but I believe there are real and tangible consumer benefits in the framework items before us. More broadband for more people is at the top of the list. As just one example, we anticipate significant new investment with over seven million previously-unserved consumers getting broadband within six years. That means more service, more jobs, more opportunities.

Building critical infrastructure—and broadband is our most critical infrastructure challenge right now—has to be a partnership. The states are important and essential partners as we design and implement new USF and ICC programs. I have been a strong advocate for closer federal-state regulatory partnerships since I arrived here more than ten years ago. I have had the opportunity to serve on the Joint Boards with our state colleagues, to be a part of their deliberations, to appreciate the tremendous expertise and dedication they bring to their regulatory responsibilities, and to have learned so much from them. It is just plain good sense to maximize our working relationships with them. More even than my personal preference, which is deeply-held, this is the mandate of the law. Section 254 of the Act is clear—the states have a critical role in the preservation and advancement of Universal Service. While I understand the need for predictability in an ICC regime, I am pleased that my colleagues have retained a key role for states, including arbitrating interconnection agreements; monitoring intrastate access tariffs during the

transition to bill-and-keep; and helping to implement our Universal Service Fund as well as, in many cases, their own state universal service funds. State regulators are by definition closer to the needs of their consumers than federal regulators ever can be, and they retain their role as the likely first venue for consumer complaints. Additionally, I have urged the entire team here, and all stakeholders, to think creatively about how to *expand* the state role as we implement the new systems. I would hope that carriers would see the benefits of this federal-state cooperation, too. But it is unfortunate, and highly counter-productive to consumers, when some companies exercise their huge lobbying machines to encourage state legislatures to effectively cut state public utility commissions out of telecommunications oversight. This makes everyone's job—except the industry giants'—more difficult. And it harms the nation.

On the legal front, some of the calls made in this item are unnecessarily and unfortunately more circuitous than I believe they need to be. We ought to be long past declaring that IP-to-IP interconnection obligations are required under the Act. We had the chance to do this and to declare that VoIP is a telecommunications service back in 2002 and 2005, and our failures to do so have had tangibly perverse consequences. Avoiding action not only harms competition and delays the more efficient build-out of our information infrastructure—it ensures that America will continue to be down the global broadband rankings in a world where that just doesn't cut it for us. We need to *lead* the world not so we can pin a medal on our chest. We need to lead the world to regain our prosperity, our competitiveness and our capacity to provide jobs and opportunity to every one of our citizens.

Broadband adoption is as great, or greater, a challenge than deployment. I will continue to push for doing more on adoption, but we are limited here by the reality that today's emphasis is on reforming infrastructure deployment in high cost areas. That said, I have worked to include adoption in this proceeding. I am pleased that carriers that receive funding will be expected to connect community anchor institutions that they pass. These entities are often the places where unconnected consumers get their first exposure to broadband and learn how to use it. I am similarly pleased that all Universal Service programs now include a real and enforceable requirement for affordability. It is only logical, and indeed consistent with the mandate of section 254, that carriers whose networks are funded by federal Universal Service support should be required to offer service at affordable rates. That said, much of the important adoption items are still ahead of us. We have an imminent opportunity to update our Lifeline and Link-Up programs, and I expect we will be able to accomplish that before the sun sets on the year 2011.

So there is still much work to be done. The success of today's framework depends heavily on the Commission getting related and integral policy calls right. We must revisit our long-overdue special access proceeding, something critical to small businesses and anchor institutions. This is a situation with huge spill-over effects on the excessive rates consumers are forced to pay. It is a problem that needs to be resolved by Report and Order in the next few months because it has simply waited years too long.

Similarly, we must act on contributions methodology. The *distribution* of funds is only part of the broadband challenge. Of equal importance is the *contribution* of funds going into USF. I would have preferred to see such an item in front of us today. There is inherent inequity in a system that funds the deployment of broadband off of assessments on interstate telephony. Once we ensure that double, triple and quadruple play services that benefit from Universal Service bear their fair share, we will not be subject to the unnecessary financial constraints that our current approach imposes. We also need spectrum management decisions that avoid putting still more spectrum in too few hands. Among other good results, that would drive better mobility auctions.

Successful implementation of the steps we present today will demand a degree of stakeholder cooperation that we have not seen in many years. Consumers, states, businesses, the FCC, Congress and the Administration each has a vital role to play. But, as you have heard me say before, stakeholder

partnering is how we managed to build America's infrastructure over the past two-and-a-quarter centuries, from those early post roads, bridges and canals right up through our super-highways and rural electricity. Now is the time to practice that American Way one more time. I believe the process has started off commendably. Everyone has had an opportunity for input. When we approved the NPRM in February, I remarked that everyone would be asked to give up a little so that the country could gain a lot. That spirit of shared sacrifice has made today's action possible. The process has generally—if not perfectly—worked. Stakeholders stepped up to the plate. Their analyses were important, many of their suggestions creative and helpful. Discussions were held between not only likely players, but some unlikely ones, too, and I applaud that process. I have no illusions about what perils may await us, but I do want to suggest how much better off we will all be if our efforts going forward focus on working together to implement these new frameworks, and working constructively to make changes where they may be called for, rather than spending precious time that the country doesn't have on litigation or legislative end-runs that seek to advantage single private interests at the expense of the greater public good. If the generally cooperative spirit of the past several months serves as our guide going forward, we can avoid those pitfalls.

Lots of people made heroic efforts to get us today's historic achievement. I've already mentioned the leadership of Chairman Genachowski. Our internal team, put together by the Chairman, worked mightily and expertly on a whole host of unbelievably complex issues. Zac Katz and the dedicated experts in the Wireline and Wireless Bureaus, Sharon Gillett, Carol Matthey, Rebekah Goodheart, Ruth Milkman, Rick Kaplan and Jim Schlichting, spent many hours answering our questions and discussing our requests, and they were backed up by dozens of our typically brilliant and dedicated FCC Team. My Commissioner colleagues spent weeks and months immersed in the tall weeds, taking hundreds of meetings, talking with one another and developing constructive proposals, and the Eighth Floor advisers, including Angie Kronenberg on Commissioner Clyburn's staff and Christine Kurth on Commissioner McDowell's, worked long days, nights and week-ends to make this happen. In my own office, Margaret McCarthy and Mark Stone provided not only great analysis but creative suggestions for getting us to better outcomes. And, I should note, *ALL* my staff felt the weight of this and all performed at the stardom level. It has been a highly professional effort by a world-class agency of which I am proud to be a member.

**STATEMENT OF  
COMMISSIONER ROBERT M. McDOWELL  
APPROVING IN PART, CONCURRING IN PART**

*Re: Connect America Fund, WC Docket No. 10-90; A National Broadband Plan for Our Future, GN Docket No. 09-51; Establishing Just and Reasonable Rates for Local Exchange Carriers, WC Docket No. 07-135; High-Cost Universal Service Support, WC Docket No. 05-337; Developing an Unified Intercarrier Compensation Regime, CC Docket No. 01-92; Federal-State Joint Board on Universal Service, CC Docket No. 96-45; Lifeline and Link-Up, WC Docket No. 03-109; Mobility Fund, WT Docket No. 10-208*

The feat of modernizing the high cost portion of the Universal Service subsidy program to support next-generation communications technologies, while keeping a lid on spending, is monumental. Thus, our action today is a vital first step in reforming USF while ensuring that rural consumers benefit from needed advanced services.

As I have said several times before, the communications needs of rural America is personal to me. My family deep roots in rural America. My father spent part of his boyhood during the Great Depression on a ranch on the Tex-Mex border without electricity, running water or phone service. With that background in mind, I am committed to carrying out Congress's intent of ensuring the most remote parts of our country are connected.

The challenge of solving the seemingly intractable Universal Service and intercarrier compensation puzzle, however, has cast a long shadow over the FCC for more than a decade. In my nearly five and a half years here, I have traveled across America to learn more about the practical realities of the program. I have held productive policy roundtable discussions with multiple stakeholders in the least populated state, Wyoming, as well as its neighbor South Dakota. I have traversed Tribal lands and some of the least densely populated areas of our country, including Alaska. I've also learned from consumers in urban and suburban areas who pay rates above costs to subsidize rural consumers. And I know that my colleagues have diligently conducted similar field investigations.

In trying to encapsulate what the FCC is accomplishing today, I've turned to one of North America's best telecommunications policy minds, none other than the Great One, Wayne Gretzky. Without any of us realizing it, by implication he predicted what we would do today when he said, "A good hockey player plays where the puck is. A great hockey player plays where the puck is going to be." Today, the FCC is repurposing the high cost program to support unserved consumers' use of communications technologies from where they *are* to where they are *going to be* – in both a technological and geographical sense.

October 27, 2011, is a date that marks a dramatic departure from nearly a century-old policy of opaquely subsidizing analog, circuit-switched voice communications services, to using the efficiencies of market-based incentives to support broadband connectivity in those areas where economic realities have stalled market penetration. Under both Republican and Democratic administrations, the High Cost Fund has become bloated and inefficient. Today, a Republican and three Democrats are taking a giant leap together to fix that. I commend the Chairman for his leadership and fortitude throughout this process. I also thank Commissioners Copps and Clyburn for their thoughtfulness, graciousness and collegiality during this proceeding.

Since I arrived at the Commission in 2006, I have been calling for the FCC to achieve five primary goals when focusing on USF reform, the most important of which is to contain the growth of the

Fund. While our efforts are not perfect, today we are largely achieving this goal in a town otherwise known for its *inability* to control spending.

While I'm on that subject, some have suggested that we scrap the USF program altogether. Others can have that debate. In the meantime, we are mindful that Congress created this program and its ultimate survival is a matter only for Congress to determine. We are duty bound to operate within the statutory constructs handed to us.

In the spirit of being fiscally responsible, however, we are mandating that the high cost program of the Universal Service Fund live under a *definitive budget* for the first time in history. Functionally, the budget serves as an annual cap through 2017. Until then, the Fund may not rise higher than \$4.5 billion per year, on average after true-ups, without Commission approval. After that time, it is my hope that competitive forces will flourish and the development of new technologies will create additional efficiencies throughout the system. If so, much of the vacuum will have been filled and the need for future subsidies will have declined substantially. Perhaps the day will come when Congress can determine that subsidies are no longer needed.

Of course, there is nothing we can do to prevent future Commissions from voting to comprehensively alter what we have done and spend more money later. That would be true as a matter of law whether we called our fiscally prudent action today a "definitive budget," "cap," "beret" or "sombbrero." If the FCC of tomorrow wants to undo what we have done today, however, good luck with that. You're going to need it. If history is our guide, the alacrity with which the Commission can accomplish comprehensive USF reform is nothing short of glacial. Nonetheless, I hope future Commissions will keep their caps *on* out of respect for fiscal responsibility and the consumers who pay for these subsidies.

Also, today we are only addressing the high cost program of the distribution side of the Universal Service Fund. We are not addressing the entire Universal Service Fund, which currently distributes over \$8 billion per year. To put that figure in context, USF is larger than the annual revenues of Major League Baseball. In separate proceedings, we will also reform the other USF spending programs. I cannot stress enough that all of the fiscal efficiencies that we will realize in the wake of today's reforms will be lost if similar fiscal discipline is not applied to all Universal Service programs as well.

Moreover, we are only addressing part of the distribution, or spending, side of the Universal Service program. In fact, despite all of the exhaustive efforts to get to this point, our work on comprehensive Universal Service reform is not even half finished. Equally important is the need to reform the contribution methodology, or how we are going to pay for all of this. It is no secret that for years I have been pushing for contribution reform to be carried out at the same time as distribution reform. Obviously, that is not happening today; therefore we must act quickly. The contribution factor, a type of tax paid by consumers, has risen each year from approximately 5.5 percent in 1998 to an estimated 15.3 percent in the fourth quarter of this year. This trend is unacceptable. We must abate this automatic tax increase without further delay. Accordingly, I strongly urge that we work together to complete a proceeding to reform the contribution methodology in the first half of the year.

In the meantime, today we are undertaking significant reforms. Although time does not allow me to discuss each one, I'd like to mention a few of my favorites.

- It may surprise some observers the vigor and breadth to which we give life to competitive bidding, a market-based approach to distributing subsidies, otherwise known as reverse auctions. This is more than I could have hoped for in 2008, when a Republican-controlled FCC teetered on



the cusp of comprehensive reform before our efforts were scuttled. Supporting these provisions was likely not easy for some of my colleagues and I thank them for their spirit of compromise.

- We are eliminating the inefficient identical support rule. The wasteful era of subsidizing multiple competitors in the same place has come to an end.
- We are finally giving consumers the benefit of more transparency by phasing out hidden subsidies, albeit 15 years after Congress told us to do so in the Telecommunications Act of 1996. Better late than never, I suppose. As the veil is lifted, however, industry and government alike will have to do their best to keep consumers properly educated on what they will see on their phones bills and what it all means. For the vast majority of consumers, rates should decline or stay the same, so I will look with skepticism on any news stories that claim the FCC is raising rates. The simple truth is: We are not.
- We are creating a frugally-minded, but reasonable, waiver process for highly unlikely cases where carriers are definitively experiencing extreme hardship due to our reforms.
- In the further notice, we propose means testing to identify qualified recipients in remote areas. Such a screening process could save money and maximize the effectiveness of the Fund.

As a legal matter, some question whether the Commission has the authority to use Universal Service funds to support broadband directly. As I have said many times before, I believe the Commission *does* have broad authority to repurpose support to advanced services as handed to us by the plain language of section 254.

In section 254(b), Congress specified that “[t]he Joint Board and the Commission *shall* base policies for the preservation and advancement of universal service on [certain] principles.”<sup>1</sup> Two of those principles are particularly instructive: First, under section 254(b)(2), Congress sets forth the principle that “[a]ccess to advanced telecommunications and information services should be provided in all regions of the Nation.”<sup>2</sup> Second, with section 254(b)(3), Congress established the principle that “[c]onsumers in all regions of the Nation, including low-income consumers and those in rural, insular, and high cost areas, should have access to telecommunications and *information services* . . .”<sup>3</sup>

Also, section 254(b)(7) instructs the Commission and Joint Board to adopt “other principles” that we “determine are necessary and appropriate for the protection of the public interest, convenience, and necessity and are consistent with” the Communications Act. In that regard, in 2010 the Federal-State Board on Universal Service recommended to the Commission that we use our authority under section 254(b)(7) to adopt a principle to “specifically find that universal service support should be directed where possible to networks that provide advanced services.”<sup>4</sup>

As part of this order today, we agreed with the Joint Board recommendation and adopted “support for advanced services” as an additional principle. Moreover, even if any of the statutory language in

<sup>1</sup> 47 U.S.C. § 254(b) (emphasis added).

<sup>2</sup> 47 U.S.C. § 254(b)(2).

<sup>3</sup> 47 U.S.C. § 254(b)(3) (emphasis added).

<sup>4</sup> Federal-State Joint Board on Universal Service, CC Docket No. 96-45, WC Docket No. 03-109, *Recommended Decision*, 25 FCC Rcd 15598, 15625 ¶ 75 (2010).

section 254 appears to be ambiguous,<sup>5</sup> the Commission's reasonable interpretation would receive deference from the courts under *Chevron*.<sup>6</sup>

It should come as no surprise, however, that I cannot support the view that section 706 provides the Commission with authority to support broadband through Universal Service funds. As I have said many times before, section 706 is narrow in scope and does not provide the Commission with specific or general authority to do much of anything. We respectfully agree to disagree on that analysis in this order.

Finally, given the breadth and magnitude of today's actions, the effects will not be fully apparent in the near term. Certainly, there will be varied opinions regarding what we have accomplished. That said, Universal Service reform is an iterative process. We will constantly monitor its implementations and quickly make adjustments, if needed.

In sum, I would like to thank all of the people who have sacrificed countless family dinners, weekends, vacations, birthday and anniversary celebrations and such over the past many months to make this day possible. While Sharon Gillett, Carol Matthey, Rebekah Goodheart, Trent Harkrader, Amy Bender, Steve Rosenberg, Brad Gillen, Victoria Goldberg and Marcus Maher of the Wireline Bureau and Rick Kaplan, Margie Weiner and Jim Schlichting of the Wireless Telecommunications Bureau deserve high praise, we all know that legions more dedicated public servants have shed their blood, sweat, toil and tears to make this endeavor possible today. I also commend the Chairman's Chief Counsel, Zac Katz, for his tireless efforts, patience and leadership during this process. Furthermore, I thank Commissioner Copps's legal advisor Margaret McCarthy and Commissioner Clyburn's legal advisor Angie Kronenberg for your collegial efforts during this process. And from my office, Christine Kurth deserves a special mention. When I hired her over two years ago from the Senate I said, "Your main mission is to fix Universal Service." She accepted my offer anyway, and has completed half of that mission today. Many, many thanks to all of you for your incredibly hard work.

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<sup>5</sup> Some contend that the definition of universal service under section 254(c)(1) muddies the water because it does not include "information service." Instead, that provision states that "[u]niversal service is an evolving level of telecommunications services . . . taking into account advances in telecommunications and information technologies and services." But, it is also relevant that the term "telecommunications service" is qualified by the adjective "evolving." Even if section 254 were viewed as ambiguous, pursuant to the well established principle of *Chevron* deference, the courts would likely uphold the FCC's interpretation as a reasonable and permissible one. See *Chevron U.S.A. Inc. v. Natural Res. Def. Council, Inc.*, 467 U.S. 837 (1984).

<sup>6</sup> *Chevron*, 467 U.S. 837; see also *Texas Office of Public Utility Counsel v. FCC*, 183 F.3d 393 (5th Cir. 1999) (relying on *Chevron* deference in affirming FCC authority to implement universal service provisions set forth in the Telecommunications Act of 1996).

**STATEMENT OF  
COMMISSIONER MIGNON L. CLYBURN**

Re: *Connect America Fund*, WC Docket No. 10-90; *A National Broadband Plan for Our Future*, GN Docket No. 09-51; *Establishing Just and Reasonable Rates for Local Exchange Carriers*, WC Docket No. 07-135; *High-Cost Universal Service Support*, WC Docket No. 05-337; *Developing an Unified Intercarrier Compensation Regime*, CC Docket No. 01-92; *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45; *Lifeline and Link-Up*, WC Docket No. 03-109; *Mobility Fund*, WT Docket No. 10-208

We are taking a momentous step today—moving ever so close to fulfilling the goal Congress set forth for universal service in the 1996 Telecommunications Act—to ensure that *all* Americans have access to affordable voice and advanced communications services. We would not be here, but for the incredibly hard work of the FCC staff, under the direction and leadership of Chairman Genachowski and his office, as well as significant input from Congress, our State partners, industry, and consumer representatives.

I believe that we have drawn from many competing sources, to form a balanced framework that will promote significant broadband deployment, as quickly as possible, to those consumers that are currently unserved. The painful truth of the matter is that there are 18 million Americans who have not fully benefitted from our current universal service policies, and that is unacceptable. They remain the “have nots” of the broadband world who I am determined will benefit the most from our action today. As I have considered these reforms, it is those unserved consumers who are first and foremost in my mind. This plan provides for speedy broadband deployment to many of these consumers, with an injection of capital in 2012, for both fixed and mobile technologies.

In addition to these immediate needs, I carefully considered how much those consumers are being asked to shoulder, when it comes to the costs of Intercarrier Compensation reform, as well as the impact on those consumers who already have service. It also shouldn't surprise anyone that it was similarly important to me, that we give service providers and their investors time to adjust to our proposed reforms, because from day one, I made a firm commitment to no flash cuts. A reasonable transition period will help ensure that providers can navigate these reforms successfully. But for those providers who require additional time to adjust, we have in place a waiver process that is firm, predictable, yet fair. Another benefit of this waiver process is that it provides this Commission with a safety net—so that we can adjust support as needed, in order to avoid inadvertently harming the success we have already achieved through our legacy system.

Overall, I believe the Chairman's proposal, carefully balances these interests and will result in a meaningful difference for many Americans, and I want to commend him and my colleagues, for the significant progress that is reflected in this Order. Accordingly, I offer my full support for the actions we take today.

As you all know, I have a deep connection to rural America. Without comparable modern communications services enjoyed by their urban counterparts, those citizens will never adequately compete in our global economy. They need and deserve reliable fixed as well as mobile broadband in order to thrive. Without this critical broadband infrastructure, rural Americans would be forever left behind. We are aware that the financial needs to provide advanced services in these areas are significant, and yes, I appreciate the fact that setting a budget for the high-cost program will provide overall certainty and predictability. However, it is equally important that we have the flexibility to adjust, as needed, within, and between these high-cost programs. I want to thank my good friends and colleagues, for

working with me, to ensure that we have not unduly limited our ability to revisit our current estimates of the funding that's needed, for the high-cost programs in the future.

An underlying theme of today's reforms is shared sacrifice for the common good. After all, we are talking about the people's money. We are accountable to them, and I am confident that the adjustments being made to the legacy USF support, and the funding mechanisms being adopted for the new Connect America Fund, are sensible. These reforms will put both the USF and ICC regimes on a sounder footing, so we may better accomplish our goal and Congress' mandate, to serve more Americans with advanced communications networks—no matter where they live, work, or travel in this great nation.

For a number of years, the Federal-State Joint Board on Universal Service and its state and federal members, have called for this Commission, to provide for the direct funding of broadband. Early on, they recognized the importance of both broadband and mobility service. I am proud that this Commission has heeded this call and is formally adopting the principle advanced by the Joint Board last year in its Recommended Decision that "universal service support should be directed where possible to networks that provide advanced services, as well as voice services." Moreover, upon the advice and counsel of our State Members and colleagues, we are adopting a Mobility Fund to infuse \$300 million in capital to extend 3G and 4G networks to more Americans in 2012. In addition, we are adopting a Mobility Fund II, to ensure that consumers have access to mobile broadband services by providing ongoing support to providers in hard-to-serve areas, and we are eliminating our identical support rule.

We owe a debt of gratitude to our State Members. They have been a significant resource for this Commission in our reform process. We sat through numerous workshops and meetings together, hashing out ideas and concepts. They spent countless hours drafting a proposal for our consideration, and they have been more than generous with their time and advice. I want to sincerely thank them for their good counsel in this proceeding and for their service to our nation.

The FCC has heavily relied on the suggestions in their plan. We are requiring USF recipients to meet interim broadband build out milestones, to annually report on their build out and service requirements, and to file those reports jointly at the FCC and the state utility Commissions. We also are implementing a cap on total per-line support, and other fiscally responsible measures, to eliminate waste and inefficiency in the system.

In addition, we are clarifying in our Order that we expect all carriers, to negotiate in good faith in response to requests for IP-to-IP interconnection for the exchange of voice traffic. Not only did we hear from the states about how important it is to ensure that IP interconnection occurs, we also received significant comment from competitive voice providers that the lack of IP interconnection is impeding the development of IP networks, including VoIP services. As such, the Order confirms that the duty to negotiate in good faith, does not depend upon the network technology underlying the interconnection, whether it is TDM, IP, or otherwise, and that we expect good faith negotiations to result in interconnection arrangements between IP networks for the purpose of exchanging voice traffic.

Another topic that I spent a great deal of time on with my state colleagues, was the Intercarrier Compensation regime. Today's decision sets forth a national approach for ICC reform, for both intrastate and interstate access rates. It's probably not surprising that I naturally gravitated to the proposal in our NPRM, that would have had the states reform their own intrastate access rates, and left the interstate reform to this Commission. But after much discussion and consideration, I will accept the Chairman's proposal that a federal approach is the right outcome in this instance. A multi-state process for reform would be long and arduous, costly and demanding on the states, with unpredictable and perhaps inconsistent results. In the meantime, the pressure would continue to build for us to intervene and

stabilize the ICC regime to provide the companies the predictability and certainty they need to continue to invest and innovate for the benefit of consumers.

However, I think it is only appropriate that our actions today carefully preserve and recognize the reforms that some states already have undertaken. Most importantly, we have provided for replacement funding as intrastate access rates decline as a result of our reform which relieves the financial burden that would have been on states in their own attempts at reform. To that end, we also have carefully balanced ICC revenue replacement for providers, with the important goal of not burdening consumers with significant increases in their bills or overburdening the USF which is ultimately paid for by consumers. As indicated by our staff's analysis, we believe that the overall benefits that will flow to consumers as a result of this reform will far outweigh the minimal price increases they will experience on their phone bills due to ICC reform.

I also want to be quite clear that states will continue to have an important role with respect to the arbitration of interconnection agreements and in the operation of USF. With respect to USF, states will continue to designate Eligible Telecommunications Carriers for USF purposes and will continue to protect consumers through their carrier of last resort regulations. As technology evolves, so too must the role of the regulators.

We are experiencing a significant technological evolution as networks are transitioning to Internet Protocol, and consumers are using multiple modes of communications (sometimes simultaneously). Indeed, the underlying cause of the reforms we implement today is due to the enormous technological shift that has occurred in the last ten years. One constant that I have seen, however, is that consumers expect that their state regulators will serve and protect them. Moreover, those of us at the FCC need the states' expertise and knowledge on the ground, to properly execute and operate our new universal service funding mechanisms. For instance, we need the state's assistance in identifying those areas that currently are unserved by broadband. We want to target our limited resources to those consumers who do not have any broadband provider offering them service. Likewise, we will need the states' help assessing that those providers who receive funding meet their public interest obligations to build and serve. As such, I am confident that these reforms are an opportunity for us to continue working hand-in-hand with our state colleagues, to ensure that broadband is available throughout the country, and I look forward to our continued partnership with the states in this important endeavor.

The communications marketplace has changed dramatically, and one significant reason is the explosion of mobile services in the U.S. More and more Americans are relying upon their smartphones to access the Internet, and almost 30% of Americans have cut their telephone cord when it comes to home service. I have worked closely with my colleagues, to ensure that we are providing significant support for mobile services, particularly in rural America. Certainly, rural consumers and those who travel in non-urban areas expect that they will have access to mobile services that are comparable to anywhere else in this nation. We want and expect our devices to work wherever we are. As such, I believe that a budget which reflects the growing importance of mobility to Americans is significant, and that we should offer ongoing support for those areas that would not be served otherwise. I am grateful that the fund for ongoing mobility fund support—Mobility Fund II—has been increased 25% more than what was originally proposed in the circulated draft, reflecting the fact that mobility for rural areas is a priority.

I also want to thank the Chair for agreeing with me that while the identical support should be phased out, we need to ensure that Mobility Fund II is operating and funded before the phase down is completed for wireless CETCs. The pause in the phase down I proposed, is now fully reflected so that wireless carriers can have some confidence that they won't lose more than 40% of funding before they know what support they may qualify for in Mobility Fund II.

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While deployment of networks to reach individual consumers has been the paramount purpose of the high-cost program, it also has provided for service to community anchor institutions, including schools, libraries, health care facilities, and public safety agencies. In order to ensure that these vital institutions can obtain the modern services that are essential for service to their communities, we have provided them an opportunity to engage with USF recipients in the network planning stage. As such, their communications needs are fully considered by the providers. Similarly, recipients will detail in their annual reports to the FCC and the state Commissions those community anchor institutions that have received service as a result of the Fund. Accordingly, we will be able to fully account for all of the benefits that local communities' receive as a result of USF support.

Although the reforms we adopt today are extremely important for ensuring that basic and advanced communications services are physically available to all Americans, those services cannot be *truly available*, if consumers cannot afford to purchase them, the devices they need to access them are not available, or if they cannot attain the skills they need to know how to use these services. I appreciate those who have called for us to address these consumer needs today, and I agree with you that we need to do more in this area. Our broadband adoption task force is working diligently to find solutions to these issues, and I fully expect that we soon will be addressing the proposal in our Lifeline proceeding to adopt pilot projects for broadband adoption to benefit low-income Americans who qualify for the Lifeline program. I look forward to our continued work with our task force, including finishing the Lifeline proceeding before the end of the year, so that we can make more headway on this significant issue for low-income consumers.

To our Bureaus and their staffs, I thank you for your tremendous and Herculean efforts throughout this proceeding. I know you have made many personal sacrifices to help us reach this moment, and I wish to commend you for the results. You planned and conduct workshops, reviewed our record, listened to the numerous interested parties in this proceeding, balanced all concerns, crafted the Order and accompanying Further Notice, and put up with our office. Please know how much we appreciate all of you.

I wish I could say that we were at the finish line, but this, indeed, is a marathon. And like those who will compete in this Sunday's race, you have been preparing for months for this milestone that we've reached today, but we are at mile 20—we have a little further to go. I for one look forward to our continued engagement on the implementation of these reforms.

I also want to congratulate the Chairman and my fellow Commissioners on today's vote. The task before us has not been an easy one, but it is certainly one for which I am proud that this Commission has *finally* achieved. Commissioner Copps and Commissioner McDowell, I know you both have witnessed past attempts at USF and ICC reform, and you must be especially proud today. Thank you for your diligence and hard work. And Mr. Chairman, I also want to express my gratitude for your leadership, engagement, willingness to listen to and address my concerns, and your honest attempts to reach consensus.

I also want to express my sincere gratitude for my Wireline Legal Advisor, Angie Kronenberg, who led our office in this endeavor, as well as Louis Peraertz, my Wireless Legal Advisor, who provided his expertise on the mobility issues. Both ensured that the principles I care most about—that we are serving consumers—are truly reflected throughout this item. I also am appreciative for the contributions that Margaret McCarthy, from Commissioner Copps' office made to our deliberations, and to the ringleader on this significant reform today, Zac Katz. Thank you.